

TEACHERS' RETIREMENT BOARD
BENEFITS AND SERVICES COMMITTEE

SUBJECT: Doria Gutierrez – Decision on the Transcript

ITEM NUMBER: 6

ATTACHMENT(S): 2

ACTION: X

DATE OF MEETING: June 4, 1998

INFORMATION: _____

PRESENTER(S): Mr. Meador

BACKGROUND

At the January 8, 1998 meeting, the Committee rejected the Proposed Decision rendered by the Administrative Law Judge on October 3, 1997, and chose to decide the matter itself based upon the transcript. A copy of the Proposed Decision is attached for your convenience. At the Committee's direction, the transcript was ordered and the matter has been set for a decision at this meeting. The Legal Office has sent copies of the transcript, together with Exhibits, and the Proposed Decision to each board member, counsel for the System, DAG Christopher Foley, and counsel for Ms. Gutierrez, Michael Lotta.

There are two issues involved in the case: 1) Is the System required by law to correct the disability allowance payable to Ms. Gutierrez; and 2) is the System required by law to collect the overpayment that resulted from the incorrect allowance being paid? The Administrative Law Judge in her Proposed Decision decided the System must correct the allowance but is prevented from collecting the overpayment. Staff recommended rejection of the Proposed Decision based on the latter determination. It is staff's position that the System is required by law to collect the overpayment.

PRE-HEARING PROCEDURES

Mr. Lotta and Mr. Foley were provided with the opportunity to submit written argument. Mr. Foley's brief is attached. Mr. Lotta has not submitted a written brief at this point. If we receive a brief it will be mailed to the members if time permits or presented to the Committee at the meeting. Under the Administrative Procedure Act, which governs these proceedings, the Committee could decide the matter without reading the transcript if the parties stipulate to agreed facts. This option has been offered to Mr. Lotta since there are no factual disputes to be resolved. Only issues of law are involved. Mr. Lotta has not responded at this time. If a stipulation is received before the Committee meeting the members will be advised by separate letter if time permits. Otherwise the Committee will be advised at the meeting. Absent a stipulation to the facts, Committee members must have reviewed the transcript in order to participate in the decision on this matter.

PROCEDURES FOR HEARING

At the hearing each party should be provided with a set number of minutes for making oral argument. Staff recommends five minutes for each party with a short period for rebuttal and questions by Committee members. No new evidence should be taken. After hearing all arguments, the Committee is required to render its decision based on the evidence in the transcript and the arguments presented by counsel at this meeting and direct staff to prepare a Decision consistent with its findings. Staff will prepare the decision on the day of the hearing for signature by Chairperson Bodle later in the day.

If the Committee should does not find in favor of Ms. Gutierrez her legal recourse is to file a Writ in Superior Court for review of the Committee's decision. The System would then have to decide if it would comply with the decision rendered by the court or file an appeal.

Finally, please be advised that it is the Board's policy that if any Board member requests the matter be heard by the full Board, the matter is moved to the regular open meeting of the Board. If no such request is made, the Committee has the delegated authority to make a final decision in these matters.